normal enjoyment. *A fortiori,* the case is within those authorities opposed to *Norcross* v. *James.* The benefit of the covenant, having been from the first so vitally connected with the records, would pass with the records without express assignment. JOLLY, RESTRICTIVE COVENANTS, 43. And see *Vulcan Detinning Co.* v. *American Can Co.,* 67 N. J. Eq. 243; *Pomeroy Ink Co.* v. *Pomeroy, supra;* both holding that the benefit of an implied obligation not to use or disclose trade secrets passes with the obligee's business. The burden of the covenant, at first personal, attached to the copies when made, and passed with the copies to the purchaser without notice. *Lewis* v. *Gollner,* 129 N. Y. 227. And see the trade secret cases where relief has been given third parties with notice. *Tabor* v. *Hoffman,* 118 N. Y. 30; *Pressed Steel Car Co.* v. *Standard Steel Car Co.,* 210 Pa. 464.

If it be thought that both these theories are pressed too far, the plaintiff falls back on the doctrine of unfair competition, as applied in *Associated Press* v. *International News Service,* 248 U. S. 215. The similarity of the cases, assuming that neither literary property nor implied contract can be made out here, is striking. The conspicuous difference, that there the parties were strangers, while here they are related through the mortgage and subsequent sales, makes our case the stronger. The formula of the *Press Case,* that one shall not "reap where he has not sown," needs only to be inverted—one shall not reap where he has bargained and sold his sowing. It may, of course, be doubted whether the court was justified in its application of this ethical principle, and it is quite certain that this ethical principle cannot be applied generally without overturning much settled law. See dissenting opinion of Brandeis, J., and note, 13 ILL. L. REV. 708. But the ethics of our case is at least as clear as that of the *Associated Press case.*

It may be admitted that this case taxes our legal dogmas, but it will be a reproach to the law if, when the plaintiff's case is properly presented, he cannot be given relief. E. N. D.

LIABILITY OF TELEGRAPH COMPANIES FOR NEGLIGENCE IN TRANSMISSION OF INTERSTATE MESSAGES.—In the January number of the LAW REVIEW (18 MICH. L. REV. 248) was noted the case of *Western Union Tel. Co.* v. *Southwick,* 214 S. W. 987, holding that the Act of Congress, June 18, 1910, c. 309, Sec. 7, did not cover the question of liability of interstate telegraph companies for negligence. Consequently the question was held to be governed by the rule of the Texas state courts holding invalid printed stipulations on the telegram blank, limiting the liability of the company, for mistakes in transmission, to the price of the telegram, unless repeated, etc. Shorty after the *Southwick case,* the case of *Bowman & Bull Co.* v. *Postal Tel.-Cable Co.,* 124 N. E. 851, was reported, in which the Supreme Court of Illinois held similarly, a very able opinion of Thompson, J., covering the question thoroughly. On the other hand, the Supreme Court of Washington held, in *Rasher-Kingman-Herrin Co.* v. *Postal Tel.-Cable Co.,* 185 Pac. 947, that by the amendment of 1910 Congress covered the field of liability of telegraph companies on interstate messages. Close on the heels of these decisions,

however, came two decisions by the United States Supreme Court (*Postal Tel.-Cable Co.* v. *Warren-Godwin Lumber Co.,* decided December 8, 1919, and *Western Union Tel. Co.* v. *Boegli,* decided Jan. 12, 1920), holding that the amendment of 1910 covers the question of liability of telegraph companies doing interstate business, and hence superseded all rulings of state courts on the subject. In the former there was a Mississippi statute rendering void stipulations limiting liability for negligence; in the *Boegli Case* there was a law imposing a penalty for failure to deliver promptly interstate telegrams. As for the question which is decided in these two cases, we can not help thinking that the reasoning of the Illinois court in *Bowman & Bull Co.* v. *Postal Tel.-Cable Co., supra,* is sounder. The Act of 1910 nowhere mentions the question of liability; and the authority to establish different rates for different classes of messages, (e.g. repeated, unrepeated, etc.) would not seem to imply control over liability, as the essential difference between the classes of messages is one of service. However, all state rulings are now beside the point and the question can have no more than academic interest.

Now that the Supreme Court has held the matter of liability on interstate messages to be under Federal control, the question arises as to whether it will hold valid or invalid these stipulations for limited liability. The commentator in the January number of the MICHIGAN LAW REVIEW assumes that the court will hold them valid, basing his statement on an analogy to decisions already made as to liability of carriers of goods. In such cases the holding is that the carrier may limit its liability for negligence, by "fair, open, and just" agreements, to an agreed value. Due to the great discrepancies in rates, which appear to bear no relation to the cost of insurance, this amounts practically to an exemption from liability, when goods of great value are the subject of shipment (see 17 MICH. L. REV. 183, and previous comments cited therein). That the Federal courts will follow this trend finds support in the decision of the Interstate Commerce Commission in the case of *Cultra* v. *W. U. Tel. Co., (Unrepeated Message Case)*, 44 I. C. C. Rep. 670, and in *Gardner* v. *W. U. Tel. Co.,* 231 Fed. 405. In the former case the Interstate Commerce Commission said, "If as a matter of law, the rate charged and collected for an unrepeated message carries with it the same protection to the sender or recipient and imposes upon the telegraph company the same liability and degree of care as the rate for a repeated message, then the express authority of the Congress to maintain classifications of repeated and unrepeated messages, with the different rates attached thereto, is without significance or effect." However it must be remembered that there is a difference of service which accounts for the difference of rates, and hence the quotation is not strictly accurate. Telegram blanks usually carry a stipulation for insurance at a rate of two per cent for all amounts above fifty dollars (which is the limitation of liability for repeated messages); but this provision is useless, for aside from the excessive character of the charge, how is the sender to determine the amount of insurance to carry? He cannot know what sort of mistake the operator's negligence may lead to; it may even result in damage greater than the value of the goods referred to in the message. The excessive charge for insurance could be corrected by appro-

priate regulation of the Interstate Commerce Commission, but not so the conjectural nature of resulting damages. In this respect the problem of the liability of telegraph companies differs from that of carriers of goods, for in the case of the latter the value of the goods can be ascertained.

It would seem that stipulations limiting the telegraph company's liability for negligence should be held unreasonable, and yet the Supreme Court seems implicitly to incline the other way. In *Postal Tel.-Cable Co.* v. *Warren-Godwin Lumber Co., supra,* the court said, "as in terms the act empowered telegraph companies to establish reasonable rates, subject to the control which the Act to Regulate Commerce exerted, it follows that the power thus given, limited of course by such control, carried with it the primary authority to provide a rate for unrepeated telegrams and the right to fix a reasonable limitation of responsibility where such rate was charged * * *" Although this does not expressly hold the stipulation reasonable, it seems to imply as much; the case was "remanded for further proceedings not inconsistent with this opinion." R. G. D.